IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. ST/60207/2013-[DB]
[Arising out of Order-In-Appeal No. 85(VC)ST/JPR-I/2013 dated 31.07.2013 passed by Commissioner(Appeals) Jaipur]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

M/s. Uddhav Construction ...Appellant

Vs.

C.C.E. Jaipur …Respondent

Appearance:
Mr. Alok Kohari, (Advocate) for the Appellant
Mr. Neha Garg (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision.16.05.2017

Final Order No. 53584 /2017

Per S. K. Mohanty:

This appeal is directed against the impugned order dated 31.07.2013 passed by the Commissioner of Customs and Central Excise (Appeals) Jaipur.

2. In this case, proceedings were initiated by the Department on the ground that the appellant did not deposit service tax for providing Erection, Commissioning or installation service to M/s Hindustan Petroleum Corporation during the period 2009-2010. The demand was confirmed on the ground that the appellant had not included the value of free supply materials i.e. Tank dispenser unit etc. in the taxable value and as such, the benefit of abatement

claimed under Notification No. 1/2006-ST dated 01.03.2006 is not available.

3. Heard both the sides and perused the records.

4. We find that in support of claim of benefit of abatement provided under Notification dated 01.03.2006, the appellant had not produced any documents before the authorities below, which has been specifically mentioned in the impugned order passed by the Ld. Commissioner (Appeals). The Ld. Commissioner (Appeals) has recorded the following findings in the impugned order to hold that the appellant is liable to pay service tax on the services provided by it to the service receiver.

> "8. I find that the appellants have been supplied free material i.e. pumps/ tanks/ dispenser unit/ other auxiliary items by petroleum companies, therefore, in the case of works covered under the category 'erection, commissioning or installation service' the benefit of abatement notification No. 1/2006 – ST Dated 1/3/2006 is not available. <u>In the case of erection, commissioning and installation service, the benefit of said notification is available if the said contract involved erection, commissioning and installation service and supply of plant, machinery and equipment.</u> In this case, I find that the contracts involved only labour work and some small items but the same did not involve the supply of plant, machinery and equipment, therefore the said notification is not applicable where plant, machinery & equipment are not supplied in the contract. In view of above the service tax is chargeable on the gross receipt without any abatement under 'erection, commissioning and installation service', whether or not the cost of free supplied material is included."

5. Since on the basis of evidence available on record, the Ld. Commissioner (Appeals) has arrived at the conclusion that the benefit of abatement provided under Notification dated 01.03.2006

is not available to the appellant, we do not feel it appropriate to interfere with such findings of the Commissioner (Appeals) at this juncture.

6. Therefore, we do not find any merits in the appeal filed by the appellant. Accordingly, the same is dismissed.

(Dictated and pronounced in the open court)

(V. Padmanabhan)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Neha